

Romben Aquino
Attorney and Counselor at Law
Ferro & Cuccia
100 Lafayette Street, Suite 201
New York, NY 10013
212-966-7775

**07-CV-11270 (RJH) ECF CASE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Yasser Almontasser,

Petitioner,

v.

The U.S. Citizenship & Immigration Services;
Michael Mukasey, in his official capacity as
United States Attorney General;
Michael Chertoff, in his official capacity as
Secretary, U.S. Department of Homeland Security;
Emilio Gonzalez, in his official capacity as
Director, U.S. Citizenship & Immigration
Services; Andrea J. Quarantillo, in her
official capacity as District Director,
U.S. Citizenship & Immigration Services;
Robert S. Mueller, III, in his official capacity
as Director, Federal Bureau of Investigation;
and the Federal Bureau of Investigation,

Respondents.

-----X

**PETITION FOR
HEARING ON
NATURALIZATION
APPLICATION**

Petitioner Yasser Almontasser, through his undersigned attorney, Ferro & Cuccia, alleges, based on personal knowledge as to himself and information belief as to all other matters, as follows:

INTRODUCTION

1. This is an individual action for a request for hearing before the District Court, pursuant to § 336(b) of the Immigration and Nationality Act. 8 U.S.C. § 1447(b).
2. This action challenges the delay of United States Citizenship and Immigration Services (“USCIS”) in rendering a decision regarding Almontasser’s naturalization application within 120 days of examination.
3. This is also an individual action under the Mandamus Act and the Administrative Procedures Act to compel the Federal Bureau of Investigation (“FBI”) to complete its background checks and to compel USCIS to act upon Almontasser’s application for naturalization.

JURISDICTION

4. The Court has jurisdiction to hear Almontasser’s request for a hearing on his naturalization application pursuant to 8 U.S.C. § 1447(b) and 28 U.S.C. § 1331.
5. The Court has subject matter jurisdiction to hear Almontasser’s request for relief in the nature of mandamus against officers and agencies of the United States. 28 U.S.C. § 1361.
6. The Court has personal jurisdiction over officials and agencies of the United States under 28 U.S.C. § 1346(a)(2).
7. Officials and agencies of the United States have been named as respondents. Thus, the Court has jurisdiction under the Administrative Procedures Act (“APA”). 5 U.S.C. §§ 551 et seq. and 5 U.S.C. §§ 701 et seq.

VENUE

8. 8 U.S.C. §1447(b) states, in relevant part, that an “applicant may apply to the United States district court for the district in which the applicant resides for a hearing on the matter.” Almontasser resides in the Bronx, NY. Thus, venue in the Southern District of New York is proper.

PARTIES

9. Almontasser is a lawful permanent resident of the United States, who resides in the Bronx, NY. His alien registration number is 75-946-136.

10. Respondent USCIS is the federal agency that adjudicates naturalization applications.

11. Respondent Michael Mukasey is the Attorney General of the United States, who has “the sole authority to naturalize persons as citizens of the United States.” 8 U.S.C. § 1421(a).

12. Respondent Michael Chertoff is the duly appointed Secretary of the Department of Homeland Security, which oversees USCIS.

13. Respondent Emilio Gonzalez is the duly appointed Director of USCIS.

14. Respondent Andrea J. Quarantillo is the District Director of the New York District office of USCIS.

15. Respondent FBI is the federal agency charged with completing background security checks for naturalization applicants.

16. Respondent Robert S. Mueller, III, is the Director of the FBI.

FACTUAL ALLEGATIONS

17. Almontasser came to the United States in 1993 on a visitor's visa. On October 30, 2002, Almontasser obtained his lawful permanent resident status through marriage to his wife, Saba Hidais, a United States citizen. Almontasser's alien registration number is 75-946-136.

18. On or about December 12, 2005, Almontasser submitted an N-400 Application for Naturalization to USCIS pursuant to Section 319 of the Immigration and Nationality Act.

19. Almontasser meets all of the statutory requirements for naturalization.

20. Almontasser wants to become a citizen of the United States for a number of reasons. He wishes to travel with an American passport. Additionally, Almontasser would like to be able to vote for his representatives and the United States President. As the general election will be held on November 4, 2008, the last day to register to vote will be October 10, 2008.

21. On April 4, 2006, Almontasser was examined by District Adjudications Officer Mace, who is authorized by USCIS to administer such examinations at the USCIS office at 26 Federal Plaza, New York, NY. On that day, Almontasser passed all the required tests of literacy and civics knowledge. However, Officer Mace informed Almontasser that he needed to comply with an N-14 request for additional documents by May 9, 2006. As a result, Almontasser was informed that a final decision could not yet be made on his application.

22. On May 4, 2006, Almontasser provided USCIS with the information it requested on the N-14 form.

23. Approximately six months after the date of his interview, Almontasser began to make inquiries about the status of his application. Between October 23, 2006, and October 10, 2007, Almontasser's counsel submitted eight inquiry letters to the Naturalization Unit at 26 Federal Plaza. USCIS has failed to provide any information about the status of Almontasser's case.

24. USCIS has not yet rendered a decision on the matter.

25. Respondent Chertoff is responsible for actions and omissions of the Department of Homeland Security, of which USCIS is a part.

26. Respondent Gonzalez is responsible for the actions and omissions of USCIS.

27. Respondent Quarantillo is responsible for the actions and omissions of the 26 Federal Plaza office of USCIS, which is part of the New York District Office.

28. Respondent FBI has not yet completed its background security checks.

29. Respondent Mueller and Respondent Mukasey are responsible for the actions and omissions of the FBI.

30. More than 120 days have elapsed since Almontasser's naturalization examination on April 4, 2006. In fact, it has been over one year and eight months.

STATUTORY AND REGULATORY FRAMEWORK

31. 8 U.S.C. §1447(b) states, in relevant part, that "if there is a failure under section 335 before the end of the 120-day period after the date on which the examination is conducted under such section, the applicant may apply to the United States district court . . . for a hearing on the matter. Such court has jurisdiction over the matter and may

either determine the matter or remand the matter, with appropriate instructions, to the Service to determine the matter.”

32. 8 C.F.R. § 335.2(b) states: “The Service will notify applicants for naturalization to appear before a Service officer for initial examination on the naturalization application only after the Service has received a definitive response from the Federal Bureau of Investigation that a full criminal background check of an applicant has been completed.”

33. 8 C.F.R. § 335.3(a) states that a decision to grant or deny the naturalization application shall be made at the initial examination or within 120 days after the date of the initial examination if the applicant has complied with all the requirements of naturalization.

34. 5 U.S.C. § 555(b) states “with due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it.”

35. Under 5 U.S.C. § 706, a reviewing court shall “compel agency action unlawfully withheld or unreasonably delayed.”

CLAIMS FOR RELIEF

36. Almontasser refers to and incorporates herein Paragraphs 1 through 35 of this Complaint as though set forth in full hereat.

37. Under 5 U.S.C. §§ 551 et seq., Almontasser has been aggrieved by the Respondents’ unlawful delay in acting upon Almontasser’s application and have failed to carry out the adjudicative functions delegated to them by law within a reasonable time.

38. Under 5 U.S.C. §§ 551 et seq., Respondents owe Almontasser a duty to adjudicate his naturalization application within a reasonable time frame. Respondents have breached that duty by unreasonably delaying the processing of Almontasser's application for naturalization, thus depriving Almontasser of the benefits of United States citizenship.

39. Under 5 U.S.C. § 555(b), Respondents have failed to conclude a matter that has been presented to them within a reasonable time.

40. Respondents FBI, Mueller, and Mukasey have failed to complete Almontasser's background checks within a reasonable time frame, thus depriving Almontasser of the benefits of having United States citizenship. Almontasser deems an excess of one year and eight months to be an unreasonable amount of time.

41. Respondent USCIS, by and through its officers Respondent Chertoff, Respondent Gonzalez, and Respondent Quarantillo, have failed to act upon Almontasser's application for naturalization within 120 days of his naturalization examination, thereby depriving Almontasser of the benefits of having United States citizenship.

WHEREFORE, Petitioner prays that this honorable Court:

- (1) Hold a hearing to determine the matter;
- (2) In the alternative, issue an order remanding the matter with instructions to Respondents to complete the security checks and adjudicate the naturalization application within 30 days of the Court's order; and
- (3) Grant such other and further relief as this Court deems just and proper.

Dated: December 13, 2007
New York, New York

Respectfully submitted,
FERRO & CUCCIA

By: _____
Romben Aquino
rombenesque@gmail.com
100 Lafayette Street
New York, NY 10013
212-966-7775